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## FINAL NOTICE

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To: Mr Adrian Geoffrey Horn

Reference  
Number: AGH01059

Date: 3 March 2021

### **1. ACTION**

1.1. For the reasons given in this Final Notice, the Authority hereby:

- (1) imposes on Mr Horn a financial penalty of £52,500, pursuant to section 123(1) of the Act; and
- (2) makes an order prohibiting Mr Horn from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, pursuant to section 56 of the Act.

1.2. Mr Horn agreed to resolve this matter and qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £75,000 on Mr Horn.

### **2. SUMMARY OF REASONS**

2.1. Mr Horn was a senior market-making trader at Stifel Nicolaus Europe Limited ("Stifel") and was approved to hold the customer dealing function CF30. He was an experienced trader, having worked as a trader or broker at a number of firms since 1985.

2.2. As part of his role, Mr Horn traded shares in McKay Securities Plc ("McKay"), a commercial property investment company. During the period 18 July 2018 to 22 May 2019 ("the Relevant Period") McKay was admitted to trade on the London

Stock Exchange ("LSE") and was a constituent of the FTSE All Share Index. Stifel acted as corporate broker and financial adviser to McKay.

- 2.3. Mr Horn believed that in order for McKay to remain in the FTSE All Share Index, a minimum volume of 13,000 McKay shares were required to be traded each day. Whilst there was no daily minimum volume of trading required in order to remain in the FTSE All Share Index, there was a liquidity requirement based on the monthly median number of daily trading volume.
- 2.4. During the Relevant Period, Mr Horn utilised an abusive trading strategy with a view to ensuring that a minimum volume of 13,000 McKay shares were traded each day. As part of this strategy, Mr Horn would check to see how many McKay shares had traded before the market closed and, if the volume traded was below 13,000, would make up the shortfall by executing wash trades with himself. Mr Horn thereby placed buy orders in McKay shares that traded with his existing sell orders (and vice-versa). With a view to avoiding detection, Mr Horn usually placed one order into the market through a third-party broker via a Smart Order Router ("SOR") and the order with which it would execute via Stifel's direct access to the LSE.
- 2.5. In total, Mr Horn executed 129 wash trades during the Relevant Period. As a result of his conduct, Mr Horn gave false and misleading signals to the market as to demand for and supply of McKay shares. Mr Horn's conduct amounted to market manipulation which is prohibited by Article 15 of MAR.
- 2.6. This market manipulation was serious and directly undermined the integrity of the market. As well as creating a false volume in McKay shares, it was intended to falsely keep McKay in the FTSE All Share Index. Mr Horn's conduct was intentional and repeated.
- 2.7. The Authority has taken this action because:
  - (a) during the Relevant Period Mr Horn intentionally placed the wash trades which gave false or misleading signals as to the supply of and demand for shares in McKay. This course of conduct constitutes market manipulation as defined by Article 12, in contravention of Article 15 of MAR; and
  - (b) as a result of his having engaged in market manipulation, Mr Horn displayed a lack of integrity. Therefore, he is not a fit and proper person to perform any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.
- 2.8. The Authority therefore:

- (a) imposes on Mr Horn a financial penalty of £52,500 pursuant to section 123(1) of the Act, for engaging in market manipulation; and
- (b) makes an order prohibiting Mr Horn from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm, pursuant to section 56 of the Act.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the body corporate known as the Financial Conduct Authority;

"Best Bid" means the highest price at which a person was willing to buy the security;

"Best Offer" means the lowest price at which a person was willing to sell the security;

"DEPP" means the Decisions Procedures and Penalty Manual, part of the Handbook;

"the Desk Mandate" means Stifel's Equity Principal Trading Desk Mandate;

"FTSE All Share Index" represents the performance of all eligible companies listed on the London Stock Exchange's ("LSE") main market, which pass screening criteria for size and liquidity. The index captures 98% of the UK's market capitalisation, according to the index provider FTSE Russell (part of the London Stock Exchange Group);

"Handbook" means the Authority's Handbook of Rules and Guidance;

"MAR" means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;

"Oriel" means Oriel Securities Limited;

"Smart Order Router" ("SOR") is an algorithm or system that automates certain aspects of order placement (such as time, size, venue or price) with the goal of achieving the best execution price;

"Stifel" means Stifel Nicolaus Europe Limited;

"Stage 1" means the period during an investigation by the Authority in which a settlement discount is available if a settlement (which may be a focused resolution agreement) is reached, as described in DEPP 6.7.3G(1);

“the Relevant Period” means the period from 18 July 2018 to 22 May 2019; and  
“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

#### **4. FACTS AND MATTERS**

##### **Mr Horn’s role at Stifel**

- 4.1. Mr Horn joined Oriel in 2010 as a senior market-making trader. Following Stifel’s acquisition of Oriel in 2015, Mr Horn continued to perform the same role at Stifel until his employment was terminated on 10 July 2019. During the Relevant Period, Mr Horn was approved to perform the CF30 (Customer) controlled function.
- 4.2. Mr Horn has worked as a trader or broker at a number of firms since 1985. His role as a market-making trader at Stifel was to trade shares predominantly in the real estate sector. This involved placing and executing orders on behalf of Stifel’s clients. Mr Horn was also able to execute trades on his own behalf to try and make money for Stifel.

##### **Stifel’s Desk Mandate and Annual Certification**

- 4.3. Stifel provided Mr Horn on an annual basis with a hard copy of the Desk Mandate. The Desk Mandate detailed the authority that trading desks had and specified how they should operate. Mr Horn was required to trade in accordance with the Desk Mandate.
- 4.4. Under a section entitled ‘Market Abuse’, the Desk Mandate stated: *“Stifel is required to report to the FCA without delay any orders or trades which it suspects, on reasonable grounds, may have involved market abuse. Individuals must therefore report confidentially any activity that they feel is suspicious, unethical or is unacceptable market conduct to Compliance for further review”*. This section referred to Annex 1 of the Desk Mandate, which identified ‘wash trades’ as an indicator of potential market abuse and provided the following description of wash trading: *“Entering into arrangements for the sale or purchase of a financial instrument where there is no change in beneficial interests or market risk, or where beneficial interest or market risk is transferred between colluding parties.”*
- 4.5. Mr Horn was required to sign an annual attestation to confirm that he had received and would adhere to the Desk Mandate. Mr Horn signed his most recent attestation to this effect, in advance of the Relevant Period, on 11 July 2018 (a period of 7 days before he executed his first wash trade).
- 4.6. Mr Horn was also required to complete an annual certification to affirm that he understood and would comply with various rules and regulations. Mr Horn

submitted his most recent certification on 4 February 2019, which was during the Relevant Period. As part of this certification, Mr Horn confirmed that he understood that it was his responsibility to be aware of and keep up to date with Stifel's and industry wide practices, rules and regulations. He also certified that he was aware of the location of the Compliance Handbook on the intranet and acknowledged that the Compliance Handbook would assist him in keeping compliant. The Compliance Handbook contained a section on market abuse, which described the relevant statutory regime and defined market manipulation. Annex I to the section provided a definition of wash trades and listed it as an indicator of manipulative behaviour.

### **McKay Securities Plc**

- 4.7. McKay is a commercial property investment company. During the Relevant Period McKay was listed on the LSE and was a constituent of the FTSE All Share Index. Stifel acted as corporate broker and financial adviser to McKay. The nature of this agreement required Stifel to perform various tasks such as market-making in McKay shares and providing share price and market information. There was no requirement in the agreement for Stifel to trade a specified number of McKay shares. Mr Horn was aware that McKay was a client of Stifel's.

### **The FTSE All Share Index**

- 4.8. The FTSE All Share Index represents the performance of all eligible companies listed on the LSE main market. It captures 98% of the UK's market capitalisation. For an issuer's shares to be included, there must be a minimum amount of liquidity or tradability of its shares. If a constituent of the FTSE All Share Index fails to meet the liquidity criteria as per the index provider's annual calculations performed in June of each year, the company will be removed. It would then fall into the FTSE Fledgling Index.
- 4.9. The liquidity requirement during the Relevant Period for McKay to remain in the FTSE All Share Index was a monthly median turnover ratio of at least 0.015% of the company's free float of shares (using the company's published free float figure at the end of each month) during at least 8 of the 12 months prior to the annual index review.

### **Order Placement**

- 4.10. When Mr Horn placed an order to buy or sell a share, he had various options as to how he could enter it into the market: he could use one of the number of third

party SORs that Stifel had access to, or he could use Stifel's direct access to the LSE market which it had as a LSE exchange member.

- 4.11. Each SOR featured an algorithm that would place the order across various exchanges in a particular way. Mr Horn was able to add instructions as to how he wanted the order executed. For example, he could request that the order be worked as a percentage of the total volume traded in the market that day. Mr Horn would typically default to a third party SOR due to its fast speed and its ability to route the order to various exchanges. If Mr Horn placed an order via Stifel's direct access to the LSE market, the order would only go to the LSE.

#### **The execution of the Wash Trades**

- 4.12. During the Relevant Period, if there was little or no volume trading in McKay shares there would be a point in the day when Mr Horn would enter bids and/or offers. The purpose of entering these orders would be to create liquidity in the order book to try to encourage other market participants to deal with him.
- 4.13. Approximately an hour before the market closed Mr Horn would look and see if McKay shares had traded. If the volume traded was below 13,000 shares, Mr Horn would execute wash trades so that this volume was reached.
- 4.14. For example, Mr Horn might initially place an order to sell McKay shares at the best offer price. If, towards the end of the trading day, this sell order had not executed and the volume of McKay shares traded had not reached 13,000, Mr Horn would enter a buy order to execute against it.

#### **Motivation for the Wash Trading**

- 4.15. As set out above, during the Relevant Period, Mr Horn placed orders to trade shares in McKay which executed with existing orders he had previously placed in the market ("the wash trades"). There was no change in beneficial interest as a result of the wash trades.
- 4.16. Mr Horn's motive for executing the wash trades was to ensure that at least 13,000 McKay shares were traded each day which he believed, from conversations with colleagues, was a liquidity requirement to remain in the FTSE All Share Index. He assumed that McKay wanted to remain in that higher index for status and rating purposes. Mr Horn thought that by assisting McKay to remain in the FTSE All Share Index he would benefit the relationship between Stifel and its corporate client McKay.

- 4.17. Additionally, whilst Mr Horn was not asked to execute a certain volume of shares a day, he considered that it would reflect badly on him within Stifel if McKay did not achieve sufficiently high trading volumes.

#### **The characteristics of Mr Horn's wash trades**

- 4.18. On 68 days in the Relevant Period, Mr Horn executed a total of 129 wash trades in respect of a total of 520,435 McKay shares. This represented approximately 5.4% of shares traded in McKay in the market during the Relevant Period.
- 4.19. The average size of each wash trade was 4,034 shares. On the days that Mr Horn executed wash trades, on average they accounted for 39.4% of the total market volume in McKay shares.
- 4.20. Mr Horn knew that his conduct would have resulted in false and misleading signals to the market regarding the true supply of and demand for McKay shares.
- 4.21. Mr Horn stopped executing wash trades after Stifel identified a wash trade and told him to cease trading in that manner.

#### **Wash trading on 7 May 2019**

- 4.22. An example of Mr Horn carrying out wash trading took place on 7 May 2019.
- 4.23. At 7:53:00, Mr Horn placed two limit orders. Each order was for 3,000 McKay shares and was placed directly on the LSE order book. The buy order was priced at £2.35 and the sell order was priced at £2.45.
- 4.24. Between 8:24:01 and 12:02:17, Mr Horn entered a number of buy and sell orders for McKay shares at various prices and sizes via a third-party broker's SOR. None of these orders were executed.
- 4.25. By 14:56:14 no trades in McKay shares had been executed in the market that day. Mr Horn entered a 5,000-share sell order through a third-party broker's SOR at a price of £2.42. This order became the best offer price (the previous best offer had been £2.44). The purpose of the sell order was to try to encourage other market participants to trade.
- 4.26. At 15:00.45, a trade for 8,219 McKay shares was executed in the market. Mr Horn was not involved in this trade but would have been aware of it. By 16:05:00, the number of McKay shares traded that day was 8,219, which was 4,781 short of 13,000.
- 4.27. At 16:05:01 Mr Horn entered a 5,000-share buy order in McKay at a price of £2.42 per share. The order was placed onto the LSE using Stifel's direct membership. This buy order executed against the 5,000-share sell order Mr Horn had placed at

14:56:14. Mr Horn thereby conducted a wash trade as he had traded McKay shares with himself. Mr Horn's motivation for executing this wash trade was to ensure that the overall volume of shares traded in McKay that day reached 13,000. The wash trade resulted in the number of shares traded in McKay rising to from 8,219 to 13,219. Subsequently, a further 1,286 McKay shares were traded by other market participants between 16:12:37 and 16:27:57.

- 4.28. The wash trade buy order was placed via Stifel's direct membership whilst the sell order had been placed using a third party SOR. Mr Horn used different systems to place the orders on each side of the trade in an attempt to avoid anyone detecting that he was trading with himself.
- 4.29. As a result of the wash trade, it was reported to the market that 5,000 shares in McKay had been traded at £2.42 at 16:05:01. Mr Horn's wash trade accounted for 34% of the total reported volume of trading in McKay shares that day.

#### **Impact of the wash trading**

- 4.30. Details of trades in McKay shares such as time, price and volume were reported to other market participants. As a result, other market participants would have seen what they believed to be legitimate trades in McKay shares occurring in the market. In addition, the wash trades increased the end of day trading volume reported to the market. Therefore, the wash trades would have created false and misleading signals regarding the true supply of and demand for McKay shares.
- 4.31. The amount of volume traded in a share is a measure of its liquidity. The wash trades impacted the liquidity of McKay shares. Furthermore, as the liquidity of a stock is a factor a market participant may consider prior to making an investment decision, market participants may have made decisions to buy or sell McKay shares (or other related companies) based on the artificially high volume of trades reported due to the wash trades.

### **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.

#### **Articles 12 and 15 of MAR**

- 5.2. Article 15 of MAR, as a result of Article 12(1)(a) of MAR, prohibits the placing of an order to trade which gives, or is likely to give, a false or misleading signal as to the supply of or demand for a UK listed share.
- 5.3. Article 12(1)(a) of MAR states that market manipulation shall comprise the following activities (so far as relevant to this Notice):

“entering into a transaction, placing an order to trade or any other behaviour which:

gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...];

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13.”

- 5.4. Section 131AE of FSMA states that Article 15 of MAR may be contravened by a person alone or a person and one or more other persons jointly or in concert.

#### **Annex I of MAR**

- 5.5. Annex I of MAR describes the following practice as an indicator of manipulative behaviour for the purposes of Article 12(1)(a) of MAR:

“whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances.”

- 5.6. Mr Horn’s wash trades were not carried out for legitimate reasons, nor did they conform with an accepted market practice as established in accordance with Article 13.

- 5.7. Mr Horn engaged in market manipulation as defined by Article 12(1)(a) and in contravention of Article 15 of MAR, because by executing the wash trades he gave false and misleading signals as to the supply of and demand for McKay shares. This was because in executing wash trades Mr Horn signalled to the market there was genuine volume being traded in McKay shares, when in fact this was not the case as there had been no change in beneficial interest as a result of the wash trades.

#### **Fitness and Propriety**

- 5.8. The Authority has had regard to the guidance in Chapter 9 of the Enforcement Guide (“EG”) in considering whether to impose a prohibition order on Mr Horn. The Authority has the power to prohibit individuals under section 56 of the Act.
- 5.9. The Authority considers that Mr Horn’s conduct in intentionally executing the wash trades lacked integrity. This conduct amounted to market manipulation, was likely to adversely impact other market participants and was repeated many times over a period of ten months. As a result, Mr Horn is not a fit and proper person to

perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, and a prohibition is imposed on him under section 56 of the Act.

## **6. SANCTION**

### **Financial penalty**

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5C sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in market abuse cases.

#### Step 1: disgorgement

- 6.2. Pursuant to DEPP 6.5C.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the market abuse where it is practicable to quantify this.
- 6.3. The Authority has not identified any financial benefit that Mr Horn derived directly from the market abuse.
- 6.4. Step 1 is therefore £0.

#### Step 2: the seriousness of the breach

- 6.5. Pursuant to DEPP 6.5C.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the market abuse. That figure is dependent on whether the market abuse was referable to the individual's employment. The market abuse committed by Mr Horn was referable to his employment because his role as a senior market-making trader put him in a position where he was able to execute the wash trades. In cases where the market abuse was referable to the individual's employment, the Step 2 figure will be the greater of:
- (1) a figure based on the percentage of the individual's relevant income;
  - (2) a multiple of the profit made or loss avoided by the individual for their own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the "profit multiple"); and
  - (3) for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000.

- 6.6. The Authority has not identified any profit made or loss avoided for Mr Horn's own financial benefit from the market abuse. There is therefore no profit multiple in this case.
- 6.7. An individual's relevant income is the gross amount of all benefits they received from the employment in connection with which the market abuse occurred for the period of the abuse.
- 6.8. The period of the market abuse committed by Mr Horn was from 18 July 2018 to 22 May 2019. Pursuant to DEPP 6.5C.2(5), where the market abuse lasted fewer than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the final market abuse. Therefore, the Relevant Period for calculating Mr Horn's relevant income is the 12-month period ending on 22 May 2019. Mr Horn's relevant income in this 12-month period was approximately £190,000.
- 6.9. In cases where the market abuse was referable to the individual's employment:
- (1) the Authority determines the percentage of relevant income which applies by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%; and
  - (2) the Authority determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.
- 6.10. The percentage range and profit multiple are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the market abuse; the more serious the market abuse, the higher the level. For penalties imposed on individuals for market abuse there are the following five levels:
- Level 1 – 0%; profit multiple of 0
  - Level 2 – 10%; profit multiple of 1
  - Level 3 – 20%; profit multiple of 2
  - Level 4 – 30%; profit multiple of 3
  - Level 5 – 40%; profit multiple of 4
- 6.11. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the market abuse, and whether it was committed deliberately or recklessly.
- 6.12. DEPP 6.5C.2G(14) states that factors tending to show that the market abuse was committed recklessly include, amongst other facts, that the individual appreciated that there was a risk that his actions could result in market abuse and failed adequately to mitigate that risk (DEPP 6.5C.2G(14)(a)); and the individual was

aware that there was a risk that his actions could result in market abuse but failed to check if he was acting in accordance with internal procedures (DEPP 6.5C.2G(14)(b)).

6.13. Mr Horn undertook a course of action with the clear intention of creating a false volume in McKay shares and to ensure McKay remained in the FTSE All Share Index. Mr Horn was aware that his conduct would mislead other market participants as to the demand for and supply of McKay shares.

6.14. However, in light of the factors set out at DEPP 6.5C.2G(14), the Authority considers for the purposes of the penalty calculation that Mr Horn recklessly committed market abuse.

6.15. DEPP 6.5C.2G(15) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

(1) The market abuse was committed on multiple occasions during the Relevant Period (DEPP 6.5C.2G(15)(c));

(2) The market abuse was committed deliberately or recklessly (DEPP 6.5C.2G(15)(f)).

6.16. DEPP 6.5C.2G(16) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

(1) Little, or no, profits were made or losses avoided as a result of Mr Horn's market abuse, either directly or indirectly (DEPP 6.5C.2G(16)(a)).

(2) The size of the wash trades suggests there was likely to be only a limited effect on the orderliness of the markets as a result of the market abuse.

6.17. The Authority has also taken into account that Mr Horn is an experienced industry professional. Mr Horn was in a senior position at Stifel and held the customer dealing function CF30 (DEPP 6.5C.2G(15)(d) and (e)).

6.18. Taking all of these factors into account, the Authority considers the seriousness of the market abuse to be level 4. This means the Step 2 figure is the higher of:

(1) 30% of Mr Horn's relevant income of £190,000, being a sum of £57,000;

(2) A profit multiple of 3 applied to Mr Horn's financial benefit of £0, a sum of £0; and

(3) £100,000.

6.19. Step 2 is therefore £100,000.

### Step 3: mitigating and aggravating factors

- 6.20. Pursuant to DEPP 6.5C.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the market abuse.
- 6.21. Having considered each of the factors listed in DEPP 6.5C.3G, the Authority has concluded that there are mitigating factors to justify a 25% adjustment to the Step 2 figure. Of these, the Authority considers the following factor to be relevant:
- (1) Mr Horn has demonstrated a very high level of cooperation during the investigation. He admitted that he intentionally placed orders to execute with his existing orders. Mr Horn made these significant admissions both to his employer Stifel when the issue was first raised with him and at a very early stage in the investigation during a voluntary interview with the Authority. Mr Horn's admissions have significantly expedited the investigation.
- 6.22. Step 3 is therefore £75,000.

### Step 4: adjustment for deterrence

- 6.23. Pursuant to DEPP 6.5C.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the market abuse, or others, from committing further or similar market abuse, then the Authority may increase the penalty.
- 6.24. The Authority considers that the Step 3 figure of £75,000 represents a sufficient deterrent to Mr Horn and others, and so has not increased the penalty at Step 4.

### Step 5: settlement discount

- 6.25. Pursuant to DEPP 6.5C.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.26. The Authority and Mr Horn have reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.27. Step 5 is therefore £52,500.

### Penalty

- 6.28. The Authority therefore imposes a total financial penalty of £52,500 on Mr Horn for market abuse.

### **Prohibition**

- 6.29. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Horn. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.30. The Authority considers that, due to his having recklessly engaged in market abuse, Mr Horn lacks integrity and is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, and therefore imposes a prohibition order on him under section 56 of the Act.

## **7. PROCEDURAL MATTERS**

- 7.1. This Notice is given to Mr Horn under and in accordance with section 390 of the Act. The following statutory rights are important.

### **Decision maker**

- 7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

### **Manner and time for payment**

- 7.3. The financial penalty must be paid in full by Mr Horn by no later than 17 March 2021.

### **If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 18 March 2021, the Authority may recover the outstanding amount as a debt owed by Mr Horn and due to the Authority.

### **Publicity**

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority contacts**

7.7. For more information concerning this matter generally, contact Michael Prange at the Authority (direct line: 020 7066 1386/email: [michael.prange@fca.org.uk](mailto:michael.prange@fca.org.uk)).

Sadaf Hussain

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight

## ANNEX A

### RELEVANT LEGISLATIVE AND REGULATORY PROVISIONS

#### 1. RELEVANT LEGISLATIVE PROVISIONS

##### **The Financial Services and Markets Act 2000 (“the Act”)**

###### The Authority’s statutory objectives

- 1.1. The Authority’s statutory objectives, set out in section 1B(3) of the Act, include the integrity objective, which is protecting and enhancing the integrity of the UK financial system and includes (amongst other matters) its not being affected by contraventions by persons of Article 15 (prohibition of market manipulation) of the market abuse regulation.

###### Section 123 of the Act

123.— Power to impose penalties or issue censure

(1) The Authority may exercise its power under subsection (2) if it is satisfied that—

(a) a person has contravened [...] Article 15 (prohibition of market manipulation) of the market abuse regulation; [...]

(2) The Authority's power under this subsection is a power to impose a penalty of such amount as it considers appropriate on the person.

###### Section 56 of the Act

- 1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

##### **Regulation (EU) No 596/2014 (“MAR”)**

###### Article 2: Scope

1. This Regulation applies to the following:

- (a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
- ...

#### Article 12 of MAR: Market manipulation

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:

- (a) entering into a transaction, placing an order to trade or any other behaviour which:
  - (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...];

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13.

#### Article 13 of MAR: Accepted market practices

1. The prohibition in Article 15 shall not apply to the activities referred to in Article 12(1)(a), provided that the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with this Article.

#### Article 15 of MAR: Prohibition of market manipulation

A person shall not engage in or attempt to engage in market manipulation.

#### Annex I of MAR

##### A. Indicators of manipulative behaviour relating to false or misleading signals and to price securing

For the purposes of applying point (a) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

- (c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances.

## **Commission Delegated Regulation (EU) 2016/522**

### Article 1: Subject matter and scope

This Regulation lays down detailed rules with regard to:

[...]

(2) the indicators of market manipulation laid down in Annex I to Regulation (EU) No 596/2014; ...

### Section I of Annex II of Regulation (EU) 2016/522

3. Practices specifying Indicator A(c) of Annex I of Regulation (EU) No 596/2014:

(a) Entering into arrangements for the sale or purchase of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, where there is no change in beneficial interests or market risk or where beneficial interest or market risk is transferred between parties who are acting in concert or collusion — usually known as ‘wash trades’.

## **2. The Authority’s Handbook of Rules and Guidance**

### Market Conduct

- 2.1. The part of the Authority’s Handbook of rules and guidance entitled “Market Conduct” (“MAR”) provides guidance on the Market Abuse Regulation (EU) No 596/2014 (see MAR 1.1.2G).
- 2.2. Chapter 1.6 of MAR is headed “Manipulating transactions”.
- 2.3. MAR 1.6.5G states that the following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the Market Abuse Regulation, and are indications that it is not:
  - (1) if the person has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a financial instrument;
  - (2) if the person has another, illegitimate, reason behind the transactions, bid or order to trade; and
  - (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.
- 2.4. MAR 1.6.6G states that the following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the Market Abuse Regulation, and are indications that it is:

(1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;

(2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently;

(3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and

(4) if the transaction complied with the rules of the relevant trading venue about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

2.5. MAR 1 Annex 2 "Accepted Market Practices" records that there are no accepted market practices as established by the Authority in accordance with Article 13 of MAR.

2.6. MAR can be accessed here: <https://www.handbook.fca.org.uk/handbook/MAR/>  
The Fit and Proper Test for Approved Persons ("FIT")

2.7. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person. FIT can be accessed here:

<https://www.handbook.fca.org.uk/handbook/FIT/1/3.html>

2.8. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

#### Prohibition orders

2.9. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of EG.

2.10. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its statutory objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities or to restrict the functions which he may perform.

### **Decisions Procedures and penalties manual ("DEPP")**

- 2.11. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/?view=chapter>

### **The Enforcement Guide ("EG")**

- 2.12. The Authority's approach to financial penalties and public censures is set out in Chapter 7 of EG and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>